

Purchasing your Home



H E A L Y S
LLP



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Deed of trust

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Property may be owned jointly in one of two ways:-

(A) JOINT TENANCY

Each owns the property equally (beneficial ownership) and they can only deal with it jointly. On the death of one, the whole accrues automatically to the survivor. Either party can call for the sale of the property at any time in which case the proceeds of sale are divided into equal shares.

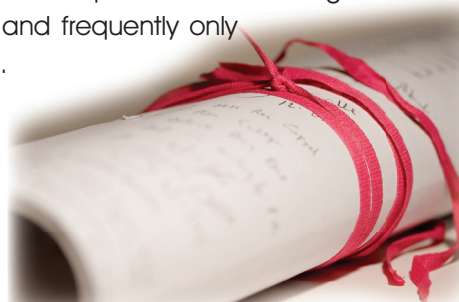
(B) TENANTS IN COMMON

Each owns a share, which can be dealt with individually, but in general terms, one tenant in common cannot dispossess or demand rent from the other. The share is divided according to agreement between the parties e.g. 70/30, 40/60, and does not pass automatically to the other party on death; it has to be left by Will. In order to protect your interests, a Deed of Trust should be drawn up to state the precise shares involved.

Deeds of trust are particularly useful in circumstances where a property is purchased jointly and the financial contributions to the purchase are unequal.

Avoiding costly litigation

Having a deed of trust in place to reflect your respective contributions to the purchase price can avoid costly litigation. In any dispute the starting point is that equitable ownership (i.e. the interest in the proceeds of sale) will follow the legal title. In the case of joint legal owners, this means that the joint legal owners are, in the absence of evidence to the contrary, to be treated as joint owners beneficially. The court can depart from this starting point but only in very limited circumstances and frequently only after expensive and time consuming litigation.



Pre nuptial/pre civil partnership agreements

Pre-nuptial agreements (or pre civil partnership agreements for gay couples) are formal written agreements between people who are expecting to get married, setting out who will own what when they are married, and, usually, attempting to set out what will happen if the couple gets divorced, dissolves their civil partnership or separates.



English law does not formally recognise pre-nuptial agreements in the way that some other countries do. In those countries, for example, a pre-nuptial agreement will always be upheld by the Courts in the case of a divorce of a marriage. However, that is not the case here. English law operates what is often called a discretionary system of asset distribution on divorce and the Courts have to consider a large number of factors when deciding how to reorder or redistribute a couple's assets. Pre-nuptial agreements are not listed as one of these factors.

However in recent years, English Courts have given pre-nuptial agreements weight in a number of cases and treated them as being of significance. In one recent case, the pre-nuptial agreement was upheld in its entirety and the signs are that this is going to be increasingly the position.

Post Nuptial/post civil partnership Agreements

This is an agreement entered into during marriage or civil partnership which attempts to regulate what would happen if the marriage or civil partnership breaks down. Such agreements are enforceable in the same way as any other type of contract. In other words they are enforceable according to usual contractual principles, for example there must be no undue pressure by one spouse over the other. Both spouses should be separately advised as to the implications of signing the agreement.

When might you consider entering into a post nuptial agreement?

- The spouses or civil partners are purchasing property together and one is contributing substantially more than the other.
- Either or both of the spouses or civil partners have inherited property or assets and seek to retain this in the event of the marriage or civil partnership breaking down.
- In contemplation of a separation.



Should you require further information or advice please contact:

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Healys is a full-service law firm providing our clients with a professional and highly effective legal service. Our team of commercially astute lawyers excel at adding value by offering clear commercial direction. For over 25 years, we have mutually beneficial relationships with clients who appreciate creative legal solutions. We succeed by understanding our clients' objectives and maintaining a clear focus.

The combination of our technical excellence and our friendly approach results in long lasting relationships with our clients. This is testament to our ability to always add commercial value. We are acutely aware of the critical importance of tailoring service and cost, especially in this challenging economic environment. Our attention is on flexibility and finding a positive and practical way forward.

This information is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.